

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

GERALD MOORE

CASE NO. 2:16-CV-01334

VERSUS

JUDGE JAMES D. CAIN, JR.

JOHN P SUTPHIN III ET AL

MAGISTRATE JUDGE KAY

MEMORANDUM RULING

Before the Court is a “Motion for Default Judgment as to John P. Sutphin, III and S & S Land & Cattle, Inc. (Doc. 26). This lawsuit involves a contract between the Plaintiff and purchaser, Gerald Moore, and the sellers, John P. Sutphin, III and S & S Land & Cattle, Inc. (hereinafter referred to as “Defendants”), for the purchase of one hundred sixteen registered Black Angus heifers for the cash sum of \$313,200.¹

BACKGROUND

Defendants are John P. Sutphin, III a person of the age of majority and a resident and citizen of Colorado and S & S Land & Cattle, Inc. which is incorporated in and exists under the laws of the state of Colorado. To date, Plaintiff, Mr. Moore, upon information and belief, asserts that Defendants’ last known addresses are as follows:

John P. Sutphin, III
S & S Land & Cattle, Inc.
17150 County Road North
Holly, CO 81047

John P. Sutphin, III
Sulphur Cattle Co., Inc.
27540 Quail Ridge Dr.
Lamar, CO 81052

John P. Sutphin, III
S&s Land & Cattle, Inc.
Lamar, CO 81052

John P. Sutphin, III
5651 County Rd. HH
Lamar, CO 81052

¹ Complaint, Doc. 1.

Through an internet website Mr. Moore found registered Black Angus heifers for sale in Colorado. After visiting Defendant's ranch, Mr. Moore agreed to purchase from the Colorado seller, 116 registered Black Angus heifers for the above-mentioned price. Mr. Moore had his bank wire the purchase money to Defendant's bank; in October 2015, 116 black heifers were delivered to Mr. Moore.

Mr. Moore alleges in his Complaint that he agreed to the following: (1) the cattle would be only registered Black Angus Cattle, delivered with registration papers in his name; (2) the cattle would be bred with calves born within the months of December 2015 and February 2016; (3) the cattle would be artificially inseminated by Defendant's representative at his expense once they had calves, and two "clean-up" bulls would be sent to Plaintiff's herd in Louisiana, annually for nine (9) years; (4) the calves would be tagged and weighed at proper intervals by Plaintiff for record keeping purposes; when ready for sale, Defendant would buy them for the prevailing market price plus \$300 each, annually for 9 years. ²

To Mr. Moore's dismay, the supposedly registered Black Angus heifer herd of 116 heifers included 40 non-registered Lim-Flex cattle. Mr. Moore did not agree to purchase Lim-flex cattle, nor was he informed that the herd included Lim-flex cattle.³

Mr. Moore made numerous attempts to obtain the registration papers from Defendant.⁴ After several months Mr. Moore received registration papers in electronic

² Id. ¶ 13.

³ Id. ¶¶ 15, 16, and 17.

⁴ Id. ¶ 18.

format, but still registered in the name of Defendant.⁵ Mr. Moore attempted to inform Defendant that the Lim-Flex cattle were not acceptable, and that he was rejecting them due to noncompliance.⁶ Mr. Moore attempted without success to rescind the sale and seeks reimbursement for all costs of preservation, maintenance, health and insurance for the entire herd.⁷

In his Complaint, Plaintiff desires a reduction in the cost of the Lim-Flex cattle, plus full reimbursement of all costs of preservation, and consequential and incidental damages, plus attorney fees.

PROCEDURAL HISTORY

The instant Complaint against S & S Land & Cattle, Inc. and John P. Sutphin III was filed on September 22, 2016;⁸ Defendants were served with the Complaint on April 27, 2017.⁹ Defendants failed to file responsive pleadings to this lawsuit. After Mr. Moore, through counsel filed an Application for Entry of Default,¹⁰ a Clerk's Entry of Default was entered as to S & S Land & Cattle, and John P. Sutphin, III on September 29, 2017.¹¹

On May 13, 2019, Mr. Moore, through counsel, filed a Motion for Default Judgment as to S & S Land & Cattle, Inc. and John P. Sutphin, III.¹² Numerous attempts have been

⁵ Id. ¶ 20.

⁶ Id. ¶ 22.

⁷ Id. ¶ 23.

⁸ Doc. 1.

⁹ Docs. 9 and 10.

¹⁰ Doc. 14.

¹¹ Doc. 15.

¹² Doc. 26.

made since the inception of this lawsuit to mail notice to Defendants, but each has been returned as “Not Deliverable as Addressed, Unable to Forward.”¹³

DEFAULT JUDGMENT

Mr. Moore asserts that Defendants have failed to appear in this lawsuit even after being properly served. Mr. Moore requests a default judgment in his favor and against John P. Sutphin, III and S & S Land & Cattle, Inc., in *solido* in the amount of \$118,000. Mr. Moore submits his affidavit as to the losses he incurred as the result of Defendants’ breach of the contract for the sale of 116 heifers that were supposed to be Registered Black Angus cattle.¹⁴ Mr. Moore attests that after several repeated attempts to resolve the issues with Defendants, he mitigated his loss by selling some of the herd at a public auction, but took a considerable loss considering they were not Registered Black Angus. Mr. Moore attests that the purchase price he agreed to with Defendants was for pure bred Registered Black Angus heifers.

Mr. Moore attests that he had obtained a loan to purchase the cattle, and because he could not repay the loan, he was forced to sell his farm. Mr. Moore seeks a judgment in the total amount of \$108,000, which equals the amount paid for the undesired and unagreed Lim-Flex Cattle, 40 in number, at \$2,700 each for a total of \$108,000.

The Court finds that there is sufficient evidence in the record to justify the default judgment and prove the amount of damages in the amount of \$108,000.


¹³ See Docs.16, 17, 22, 23, 28, 29, 30, 31, 33, 34, 36, 37, 43, 44, 48, 49.

¹⁴ Affidavit of Gerald Moore, Doc. 52.

CONCLUSION

Based on the foregoing, the Motion for Default Judgment will be granted, and a separate Judgment will be issued this date in favor of Plaintiff, Gerald Moore, and against John P. Sutphin, III and S & S Land & Cattle, Inc. in the total amount of \$108,000.

THUS DONE AND SIGNED in Chambers on this 10th day of August 2021.


JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE